

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JEFFREY FRANKLIN,

Case No. 3:15-cv-00430-MMD-VPC

Petitioner,

ORDER

v.

ROBERT LeGRAND, *et al.*,

Respondents.

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.¹

Petitioner has filed a motion to proceed *in forma pauperis*. (Dkt. no. 1). Based on the information regarding petitioner's financial status, the Court finds that the motion to proceed *in forma pauperis* should be granted.

The petition in the instant action challenges petitioner's state conviction in the Eighth Judicial District Court for the State of Nevada, Case No. C215549. Petitioner previously challenged the same conviction in this Court, filed under case number 3:10-cv-00020-HDM-VPC. The petition in case number 3:10-cv-00020-HDM-VPC was reviewed on the merits and denied by order filed January 30, 2013. (Dkt. no. 25 in 3:10-cv-00020-HDM-VPC). Judgment was entered that same date. (Dkt. no. 26 in 3:10-cv-00020-HDM-VPC). Petitioner appealed. By order filed May 23, 2013, the United States Court of Appeals for the Ninth Circuit denied petitioner's application for a certificate of appealability. (Dkt. no. 30 in 3:10-cv-00020-HDM-VPC). Petitioner has filed at least two

¹The change of address filed March 14, 2016, indicates that petitioner resides at a street address and is no longer incarcerated. (Dkt. no. 3).

1 additional habeas petitions in this Court, under case numbers 3:13-cv-00714-MMD-WGC
2 and 3:15-cv-00308-LRH-VPC, which were summarily dismissed as successive.

3 A successive habeas petition may not be filed in this Court unless the petitioner
4 has obtained permission from the Ninth Circuit Court of Appeals. See 28 U.S.C. §
5 2244(b)(3)(A) ("Before a second or successive application permitted by this section is
6 filed in the district court, the applicant shall move in the appropriate court of appeals for
7 an order authorizing the district court to consider the application."). Petitioner has made
8 no allegation or showing that he has obtained such permission from the Court of Appeals.
9 Therefore, this action will be summarily dismissed.

10 It is therefore ordered that the application to proceed *in forma pauperis* (dkt. no. 1)
11 is granted. Petitioner is not required to pay the filing fee for this action.

12 It is further ordered that the Clerk of Court separately file the petition, which is
13 attached to the application to proceed *in forma pauperis*.

14 It is further ordered that the Clerk of Court separately file the motion for
15 appointment of counsel, which is attached to the application to proceed *in forma pauperis*.

16 It is further ordered that the motion for appointment of counsel is denied.

17 It is further ordered that the Clerk of Court add Adam Paul Laxalt, Attorney General
18 of the State of Nevada, to the CM/ECF docket, as counsel for respondents. The Clerk of
19 Court will electronically serve respondents with a copy of the habeas corpus petition and
20 a copy of this order. Respondents need take no action with respect to this case.

21 It is further ordered that this action is dismissed without prejudice as a successive
22 petition.

23 It is further ordered that petitioner is denied a certificate of appealability.

24 It is further ordered that the Clerk enter judgment accordingly.

25 DATED THIS 22nd day of April 2016.

26 
27

28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE